

United States
Circuit Court of Appeals
For the Ninth Circuit.

WALVILLE LUMBER COMPANY, a Corpora-
tion,

Petitioner,

VS.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record.

UPON PETITION TO REVIEW AN ORDER OF THE UNITED
STATES BOARD OF TAX APPEALS.

FILED

FEB 23 1920

PAUL P. O'BRIEN,
CLERK



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Circuit Court of Appeals
For the Ninth Circuit.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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[1*] DOCKET 10,295.

WALVILLE LUMBER COMPANY, Walville,
Wash.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

For the Taxpayer:

ANDREW G. ELDER, Esq.

NATHAN W. HILL, Esq.

EUGENE H. KNAPP, Esq.

W. M. SMITH, Esq.

For the Commissioner:

HENRY RAVENEL, Esq.

DOCKET ENTRIES.

1925.

Dec. 24—Petition received and filed.

Dec. 29—Copy of petition served on Solicitor.

Dec. 29—Notification of receipt mailed taxpayer.

1926.

Feb. 1—Answer filed by Solicitor.

Feb. 1—Demand to produce filed by Solicitor.

Feb. 5—Copy of answer served on taxpayer. As-
signed Field Calendar.

1927.

May 12—Hearing date set 6-6-27 at Seattle, Wash.

*Page-number appearing at the top of page of original certified Transcript of Record.

May 20—Hearing changed to 6-13-27 at Room 427, County-City Bldg., Seattle, Wash.

June 13—Hearing had before Mr. Lansdon on merits. Case to stand submitted after filing of briefs. Briefs due 9-1-27 without reply.

Aug. 6—Transcript of hearing 6-13-27 filed.

Aug. 18—Motion for extension of time to 10-1-27 to file brief filed by taxpayer.

Aug. 18—Granted to 10-1-27. Both sides notified.

Aug. 17—Brief filed by G. C.

Oct. 1—Request for findings of fact filed by taxpayer.

Oct. 1—Brief filed by taxpayer.

1928.

May 28—Findings of fact and opinion rendered (Mr. Lansdon). Judgment will be entered for the Commissioner.

May 31—Order of redetermination entered.

Nov. 14—Motion for an order allowing certain exceptions filed by taxpayer. No. action taken.

Nov. 21—Motion for an order to stay collection of tax pending receipt of appeal to Circuit Court filed by taxpayer. Denied for lack of jurisdiction to issue an order as prayed.

Nov. 23—Petition for review by U. S. Cir. Ct. of Appeals, 9th Circuit, with assignments of error filed by taxpayer.

Nov. 23—Proof of service filed by taxpayer.

- Nov. 23—Statement of evidence lodged.
- Nov. 23—Proof of service of statement with notice of hearing 12-10-28 filed.
- Dec. 3—Objections to proposed statement of evidence filed by G. C.
- Dec. 3—Proof of service of objections filed by G. C.
- Dec. 10—Amendment to statement lodged.
- Dec. 10—Notice of lodging of amendment filed by taxpayer.
- Dec. 10—Proof of service filed—Hearing 12-10-28.
- [2] Walville Lumber Co.—No. 10,925.

DOCKET ENTRIES (Continued).

1928.

- Dec. 11—Statement of evidence approved and ordered filed.
- Dec. 11—Order incorporating amendment lodged 12-10-28 in statement, entered.
- Dec. 10—Hearing had before Mr. Lansdon on statement of evidence. Submitted.
- Dec. 14—Transcript of hearing 12-10-28 filed.

1929.

- Jan. 10—Stipulation *re* forwarding original exhibits filed.
- Jan. 10—Praecept with proof of service thereon filed.
- Jan. 22—Order enlarging time to 2-15-29 to file certified copies of record papers entered.

Now, January 26, 1929, the foregoing docket entries certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

[3] Filed Dec. 24, 1925. U. S. Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 10,295.

Appeal of WALVILLE LUMBER COMPANY
Walville, Washington.

PETITION.

Comes now the above-named corporation, by its attorney, Andrew G. Elder, and appeals from the determination of the Commissioner of Internal Revenue set forth in a deficiency letter bearing symbols IT:CA:2558-1 60D dated November 9, 1925, a copy of which is submitted herewith, marked Exhibit "A," together with a copy of a letter bearing symbols IT:CA:2558-1, dated May 5, 1925, marked Exhibit "B," and as a basis of its appeal sets forth the following:

I.

The taxpayer is a corporation organized and existing under the laws of the State of Washington, with its office and principal place of business at Walville, of said state.

II.

The deficiency letter bears date of November 9, 1925, the actual date of mailing to the taxpayer being unknown.

[4] III.

The taxes in controversy are income and profits taxes for the calendar year 1919 of less than \$10,000.00, the amount stated in the deficiency letter being \$7,514.86.

IV.

ASSIGNMENTS OF ERROR.

1. The Commissioner of Internal Revenue erred in disallowing the loss sustained with respect to an investment in shares of stock of the Walworth & Neville Manufacturing Company acquired in the year 1908 at a cost of \$440,000.00, with a value at the basic date of March 1, 1913, of \$225,967.28 as determined by the Bureau of Internal Revenue, said loss representing such fair value in excess of the amount received therefor upon the dissolution of the issuing company.
2. The said Commissioner erred in charging against paid-in surplus instead of earned surplus, or deficit account, the loss as shown by the books of the petitioner, of \$440,000.00 with respect to the said investment.

V.

STATEMENT OF THE FACTS.

As the basis of its appeal the petitioner alleges the following facts known to it or of which it has

been informed and believes, and upon such information and belief alleges the facts to be as follows:

- [5] 1. The petitioner was incorporated in the year 1908 under the laws of the State of Washington with an authorized capital stock of \$1,000,000.00 consisting of 10,000 shares of the par value of \$100.00 each.
2. All of the said shares of stock were issued for the acquisition of timber, timbered and logged-off land, lumber-mill, cross-arm factory, logging railroad and equipment, etc., situated in Lewis and Pacific counties, in the State of Washington, theretofore owned and operated by the Walworth & Neville Manufacturing Company, whose principal office was in Chicago, Illinois, together with 4,400 shares, par value \$440,000.00, of the capital stock of the said company, and the assumption of certain liabilities.
3. The assets acquired for shares of stock had a fair value, as determined by the Bureau of Internal Revenue and set forth in the deficiency letter, of \$170,329.46 in excess of the par value of the shares of stock issued therefor and the liabilities assumed.
4. In the year 1919 the capital stock of the petitioner was reduced, without consideration, from \$1,000,000.00 to \$500,000.00 consisting of 2,500 shares of common and 2,500 shares of preferred stock, of the par value of \$100.00

each, which reduction in capital stock was credited or creditable to paid-in surplus.

- [6] 5. Prior to the reduction of the capital stock of the petitioner, the Walworth & Neville Manufacturing Company was also the owner or holder of 5,541 shares, par value \$554,100.00, of the petitioner's capital stock, scaled down to 2,770 $\frac{1}{2}$ shares consisting of 1,365 $\frac{1}{4}$ shares of common and 1,385 $\frac{1}{4}$ shares of preferred stock.
6. No certificate or certificates evidencing the reduced shares of stock of the petitioner were ever issued to the Walworth & Neville Manufacturing Company representing the said 2,770 $\frac{1}{2}$ shares, or any other number; instead, certificates for 1,385 $\frac{1}{4}$ shares of preferred stock and 629 $\frac{1}{4}$ shares of common stock were issued directly to certain stockholders of the Walworth & Neville Manufacturing Company.
7. The balance of the said 1,385 $\frac{1}{4}$ shares of the common stock of the petitioner referred to under (6) above, or 756 shares, were never issued.
8. The Walworth & Neville Manufacturing Company, in which the petitioner owned 4,400 shares of stock with a par value of \$440,000.00, was formally dissolved in the latter part of the year 1919.
9. At the date of such dissolution the Walworth & Neville Manufacturing Company had no

assets, its stockholders, including the petitioner, receiving nothing as a liquidating dividend.

- [7] 10. The investment of the petitioner in 4,400 shares of stock of the Walworth & Neville Manufacturing Company acquired at a cost of \$440,000.00 had a fair value at the basic date of March 1, 1913, of \$225,967.28 as determined by the Bureau of Internal Revenue.
11. The petitioner accordingly realized a deductible loss with respect to its investment in the stock of the Walworth & Neville Manufacturing Company representing the fair value at the basic date of March 1, 1913.
12. In connection with the preparation of the income and profits tax return of the petitioner for the calendar year 1919 there was taken into account as a tentatively determined loss the amount of \$74,400.00 with respect to the investment in shares of stock of the Walworth & Neville Manufacturing Company.
13. Such tentatively determined loss, which is less than the loss based on either the cost or the value of the investment at March 1, 1913, whichever is less, has been disallowed by the Commissioner on the hypothesis that the petitioner exchanged 4,400 shares of the stock of the Walworth & Neville Manufacturing Company for 756 shares of the petitioner's own stock, or a "capital transac-

tion," and that the loss therefrom is not deductible for the purpose of computing taxable net income, citing as authority Article 862 of Regulations 45 relating to the determination of invested capital, and Office Decision 479 (2 C. B. 29), relating to the effect upon [8] taxable income of a voluntary purchase by a corporation of its own shares of stock; whereas, as set forth under (7), *supra*, the said 756 shares of stock were never issued and could not, therefore, have been received or acquired in exchange or as a liquidated dividend.

14. Predicated on the view that the loss sustained with respect to the investment in shares of stock of the Walworth & Neville Manufacturing Company as shown by the books, or \$440,000.00, represented consideration paid for the voluntary retirement or purchase of the petitioner's own shares of stock, or a "capital transaction," which is not consistent with the facts, the Commissioner has charged such loss against paid-in surplus rather than to earned surplus (or deficit) account, thereby reducing paid-in surplus at the end of the year 1919 from \$670,329.46 as shown by a statement forming a part of the deficiency letter, with a corresponding understatement of the invested capital for the year 1920 as set forth in a letter from the

Commissioner's office dated May 5, 1925, and submitted herewith as Exhibit "B."

VI.

PROPOSITIONS OF LAW.

The petitioner, in support of its appeal, relies upon the following propositions of law:

1. Section 234 (a) (4) of the Revenue Act of 1918 provides that in computing the net income of a corporation subject to the tax imposed by Section 230, there shall be allowed as [9] deductions, losses sustained during the taxable year and not compensated for by insurance or otherwise, and (5) debts ascertained to be worthless and charged off within the taxable year.
2. Article 144 of Regulations 45, Rev., Jan. 28, 1921, also provides in part:
“ * * * if stock of a corporation becomes worthless, its cost or its fair market value as of March 1, 1913, if acquired prior thereto, may be deducted by the owner in the taxable year in which the stock became worthless, provided a satisfactory showing of its worthlessness is made as in the case of bad debts.”
3. Section 202 (a) (1) of the Act of 1918, as construed by the Supreme Court and embodied in regulations of the Treasury Department, provides that the deductible loss with respect to the sale or other disposition of property acquired prior to March 1, 1913, shall be the

excess of the cost of such property or the value at the basic date mentioned, whichever is less, over the amount or the value of property received from the disposition thereof.

4. The 4,400 shares of stock of the Walworth & Neville Manufacturing Company were cancelled by operation of law upon dissolution of the issuing company.
5. The surrender and cancellation of the said shares of stock incident to the dissolution of the issuing company was not a sale or exchange within the meaning of the [10] statute, the petitioner having received nothing as a liquidating dividend, or other consideration therefor.
6. The petitioner did not as a matter of fact or in contemplation of law purchase or otherwise reacquire or retire the 756 shares of its own stock in question which merely remained unissued incident to the reduction of the petitioner's authorized capital stock.
7. The loss thus sustained during the taxable year with respect to the investment in shares of stock acquired at a cost of \$440,000.00 and having a value at the basic date of March 1, 1913, of \$225,967.28 as ascertained by the Bureau of Internal Revenue, was determined as the result of a completed and closed transaction within the meaning of the Revenue Act of 1918, and the regulations promulgated thereunder, upon the dissolution of the

issuing company. Such loss is deductible for the purpose of computing taxable net income of the said taxable year 1919.

8. Section 326 of the Revenue Act of 1918 provides in effect that there shall be included in statutory invested capital the actual cash value of tangible property, other than cash, *bona fide* paid in for stock or shares at the time of such payment, whether such actual value is represented by capital stock or paid-in surplus, and such invested capital may not be reduced by an operating deficit.
9. The measure of the invested capital of the petitioner is \$1,170,329.46, represented, prior to the reduction in [11] capital stock, by the par value thereof, or \$1,000,000.00, and the paid-in surplus of \$170,329.46 at the inception of the company and, after the reduction of the capital stock to \$500,000.00, by the par value thereof plus the paid-in surplus of \$670,329.46, representing such paid-in surplus of \$170,329.46 at the inception of the company and the reduction of \$500,000.00 in capital stock without consideration credited or creditable to paid-in surplus.

WHEREFORE, the petitioner prays that the Board of Tax Appeals may hear and determine its appeal.

ANDREW G. ELDER,
Attorney for Taxpayer-Petitioner,
1288 Dexter Horton Building,
Seattle, Washington.

[12] State of Washington,
County of Lewis,—ss.

J. B. Banton, being duly sworn, says that he is secretary and treasurer of the Walville Lumber Company, above named, and as such is authorized to verify the foregoing petition; that he has read the said petition or had the same read to him, and is familiar with the statements therein contained, and that the facts therein stated are true, except such facts as are stated to be upon information and belief and those facts he believes to be true.

J. B. BANTON.

Subscribed and sworn to before me this 17th day of December, A. D. 1925.

[Seal] ARCHIBALD WILSON,
Notary Public in and for the State of Washington,
Residing at Walville.

[13] EXHIBIT "A."

TREASURY DEPARTMENT.

Washington, Nov. 9, 1925.

Office of
Commissioner of Internal Revenue.
IT:CA:2558-1-60D.
Walville Lumber Company,
Walville,
Washington.

Sirs: Your claim in abatement in the amount of \$7,514.86 for 1919 has been examined, in connection with returns filed, an examination of the books of

account, and conference held in the Unit July 14, 1925, and as set forth in letter dated September 8, 1925. The claim will be rejected, as shown in detail in the attached statement.

In accordance with the provisions of Section 279 (b) of the Revenue Act of 1924, you are allowed 60 days from the date of this letter within which to file an appeal to the Board of Tax Appeals contesting in whole or in part the correctness of this determination.

If you acquiesce in this determination and do not desire to file an appeal, you are requested to sign the enclosed agreement consenting to the assessment of the deficiency and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:CA:-2558-1-60D. In the event that you acquiesce in a part of the determination, the agreement should be executed with respect to the items agreed to.

Respectfully,

D. H. BLAIR,

Commissioner.

By C. R. NASH,

Assistant to Commissioner.

[14] STATEMENT.

IT:CA:2558-1-60D.

Nov. 9, 1925.

In re: Walville Lumber Company,
Walville, Washington.
1919.

Deficiency in tax—\$7514.86.
(Assessed May, 1925, 274-D.)
Claim for Abatement Rejected.
Net Income.

Net income reported		\$1,763.27
Add:		
(a) Excessive depreciation	\$ 7,823.61	
(b) Losses on W. & N. Manufacturing Company	74,400.00	
(c) Logging Railway Roadbed ...	3,322.33	
(d) Legal expenses	2,000.00	87,545.94
		<hr/>
		\$89,309.21
Deduct:		
(e) Additional depletion	\$6,742.77	
(f) Repairs to boiler.....	1,980.50	
(g) Taxes under accrual.....	2,009.25	
(h) Loss on sale of wharf.....	1,900.93	
(i) Donations	608.30	13,241.75
		<hr/>
Net income as adjusted.....		\$76,067.46

Invested Capital.	
Capital stock	\$1,000,000.00
Surplus paid in	170,329.46
<hr/>	
	\$1,170,329.46
Less:	
Inadmissibles	264,494.46
<hr/>	
Invested capital adjusted	\$ 905,835.00
Excess profits credit	75,466.80

[15] In re: Walville Lumber Company.
Computation of Tax.

% of Capital 20	Income \$76,067.46	Excess Profits Credit \$75,466.80	Balance \$600.66	Rate 20%	Amount of Tax \$120.13
<hr/>					
Total profits tax.....					\$120.13
Net income					\$76,067.46
Less:					
Profits tax					\$ 120.13
Exemption					2,000.00 2,120.13
<hr/>					
Balance subject to tax at 10%.					\$73,947.33
Amount of tax at 10%.....					7394.73
<hr/>					
Total tax assessable.....					\$7514.86
Tax assessed, May, 1925, Page					
0), Line 0, Special 3 (274d).					7514.86
<hr/>					
None					

Explanation of Adjustments to Net Income.

a. Depreciation on your fixed assets as computed

in the revenue agent's report, a copy of which has been furnished you, has been accepted by this office for the taxable year.

b. Loss claimed on Walworth and Neville Manufacturing Co. stock is not allowed as a deduction from income, since same is considered a capital account. (See Article 862, Regulations 45.) Office Decision 479; Cumulative Bulletin 111-2.)

c. Logging Railway Roadbed restored to income, inasmuch as it is a capital expenditure.

d. Legal expense, anticipated expenses, are not deductible from income

e. Depletion allowed on 28,112M feet

at a unit rate of 2.88 a M feet....\$80,962.56

Depletion claimed 74,219.77

Additional depletion allowed.....\$ 6,742.77

f. Repairs to boilers allowed as an expense.

g. Taxes under accrued allowed as an expense.

[16] STATEMENT.

In re: Walville Lumber Company,

h. Loss on sale of Southbend Wharf as an expense:

Cost\$4,455.36

Depreciation2,429.43

\$2,025.93

Selling price 125.00

Loss sustained\$1,900.93

i. Donations deducted	\$ 647.30
Donations unallowed	39.00

Donations allowed \$ 608.30

Balance Sheet.

December 31, 1918.

Plant and equipment	\$ 247,718.93
Timber	245,790.35
Land	24,514.05
Liberty bond account	1,000.00
Logs and lumber	57,085.14
Supplies	27,717.13
Accounts receivable	15,070.60
Cash	4,073.02
Deferred charges	3,494.12
Stock in Lumber Manufacturing Agency	2,000.00
Stock in Walworth and Neville Manu- facturing Company	440,000.00
	<hr/>
	\$1,068,463.34

Bonds first mortgage.....	\$ 105,500.00
Bills payable	41,957.44
Accounts payable	15,484.41
Interest accrued, notes	1,599.72
Interest accrued, bonds	2,637.50
Pay-roll	16,545.30
Taxes accrued	6,666.03
Capital stock	1,000,000.00

Paid-in surplus	170,329.46
Deficit	(292,256.52)

\$1,068,463.34

[17] STATEMENT.

In re: Walville Lumber Company,

December 31, 1919.

Cash	\$ 29,396.63
Accounts receivable	31,613.87
Liberty bonds	2,500.00
Logs and lumber	72,276.06
Supplies and material	28,482.95
Plant and equipment	240,168.00
Timber	164,827.79
Land	24,514.05
Stock in Lumber Manufacturing Agency	2,000.00
Deferred charges	4,374.25
	<hr/>
	\$600,153.60

First mortgage bonds	\$ 39,000.00
Notes payable	2,125.00
Accounts payable	20,829.11
Pay-roll	17,855.68
Interest accrued	2,005.52
Taxes accrued	7,577.57
Capital stock	500,000.00

Paid-in surplus	230,329.46
Deficit	(219,568.74)
	<hr/>
	\$600,153.60
	<hr/>

Analysis of Surplus.

Deficit, December 31, 1918		\$292,256.52
Net income	\$76,067.46	
Nontaxable	1,184.11	77,251.57
	<hr/>	<hr/>
Balance		\$215,004.95
Taxes	\$ 4,524.79	
Donations	39.00	4,563.79
	<hr/>	<hr/>
Deficit, December 31, 1919		\$219,568.74

[18] STATEMENT.

In re: Walville Lumber Company

Payment of the amount rejected should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

You are also advised that a Certificate of Over-assessment, amounting to \$6,708.87 for the year 1920, as outlined to you in office letter dated May 5, 1925, will be made the subject of a separate communication and will reach you in due course through the office of the Collector of Internal Revenue for your district and will be applied by that official in accordance with Section 281, of the Revenue Act of 1924.

The 1921 return will be closed on the basis outlined to you in office letter dated May 5, 1925.

[19] EXHIBIT "B."

TREASURY DEPARTMENT.

Washington, May 5, 1925.

Office of

Commissioner of Internal Revenue.

IT:CA-2558-1.

Walville Lumber Company,

Walville,

Washington.

Sirs: An examination of your 1920 income and profits tax return, in connection with your books of accounts and records and your claim for refund amounting to \$19,022.86, has been made.

Your claim will be allowed for \$6,708.87 and rejected for \$12,313.99. For details see the enclosed statement.

The amount allowed will be made the subject of a certificate of overassessment which will reach you in due course through the office of the Collector of Internal Revenue for your district and will be applied by that official in accordance with the provisions of Section 281 of the Revenue Act of 1924.

The Collector of Internal Revenue for your district will be officially notified at the expiration of thirty days from the date of this letter of the rejection.

Respectfully,

J. G. BRIGHT,

Deputy Commissioner.

By F. R. CLUTE,

Head of Division.

[20] STATEMENT.

IT:CA-2558-1.

In re: Walville Lumber Company,
Walville, Washington.
1920.

Overassessment—\$6,708.87.

Net income recommended by agent....		\$156,688.15
Depletion claimed	\$70,778.95	
Depletion allowed	62,560.99	
	<hr/>	
	\$ 8,217.96	
Donation allowed	761.50	7,456.46
	<hr/>	<hr/>
Net income corrected		\$164,144.61
		<hr/>
	<u>Invested Capital.</u>	
Capital stock		\$500,000.00
Paid-in surplus		230,329.46
		<hr/>
Total		\$730,329.46
Dividends prorated		3,790.98
		<hr/>
Balance		\$726,538.48
Deduction—Inadmissibles		1,184.26
		<hr/>
Invested capital		\$725,354.22
		<hr/>
Profits tax		\$24,438.01
Net income	\$164,144.61	

Less:		
Profits tax	\$24,438.01	
Exemption	2,000.00	\$ 26,438 01
<hr/>		
Taxable at 10%	\$137,706.60	
Tax at 10%		\$13,770.66
<hr/>		
Total		\$38,208.67
Tax previously assessed		44,917.54
<hr/>		
Overassessment		\$ 6,708.87
<hr/>		

[21] Balance Sheet.

December 31, 1919.

Cash	\$ 29,396.63
Accounts receivable	31,613.87
Liberty bonds	2,500.00
Logs and lumber	72,276.06
Supplies and material	28,482.95
Plant and equipment	240,168.00
Timber	164,827.79
Land	24,514.05
Stock in Lumber Manufacturing Agency	2,000.00
Deferred charges	4,374.25
<hr/>	
	\$600,153.60
<hr/>	
First mtg. bonds	\$ 39,000.00
Notes payable	2,125.00
Accounts payable	20,829.11
Pay-roll	17,855.68

Interest accrued	2,005.52
Taxes accrued	7,577.57
Capital stock	500,000.00
Paid-in surplus	230,329.46
Deficit operating	(219,568.73)
<hr/>	
Total	\$600,153.60
<hr/>	

Balance Sheet.

December 31, 1920.

Cash	\$ 52,306.27
Accounts receivable	16,896.76
Notes receivable	1,240.00
Logs and lumber	167,170.31
Supplies and materials.....	26,510.09
Liberty bonds	2,500.00
Notes investment	88,697.79
Chehalis mill site	12,820.20
Plant and equipment	236,906.20
Timber	107,066.80
Land	24,514.05
Stock in Lumber Manufacturing Agency	200.00
Deferred charges	5,471.82
<hr/>	
\$742,300.29	
<hr/>	

[22] Balance Sheet.

(Continued.)

(December 31, 1920)

Notes payable	\$ 2,125.00
Accounts payable	47,634.47

Wages payable	16,924.02
Dividend payable	7,500.00
Interest accrued	1,050.99
Taxes accrued	5,336.03
Capital stock	500,000.00
Paid-in surplus	230,329.46
Deficit	(68,599.68)

\$742,300.29

Deficit 12/31/1919	\$219,568.76
Net income 1920	\$164,144.61
Nontaxable	2,392.45 \$166,537.06

Balance	\$ 53,031.70
Dividends	\$ 15,000.00
Donations	18.00
Taxes overaccrued	550.00 \$ 15,568.00

Deficit 12/31/20	\$ 68,599.68
------------------------	--------------

Now, January 26, 1929, the foregoing petition certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[23] Filed Feb. 1, 1926. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 10295.

Appeal of WALVILLE LUMBER COMPANY,
Walville, Washington.

ANSWER.

The Commissioner of Internal Revenue, by his attorney, A. W. Gregg, Solicitor of Internal Revenue, for answer to the petition of this taxpayer, admits and denies as follows:

I. Admits the allegations contained in paragraphs 1, 2, and 3 of the petition.

II. Denies that the Commissioner committed the errors alleged in paragraph 4 of the petition.

III. With reference to the allegations contained in paragraph 5 of the petition, admits, denies and alleges as follows:

(1)–(8) Admits the allegations contained in subdivisions (1) to (8), inclusive.

(9) Specifically denies the allegations contained in subdivision (9).

(10) Admits the allegations contained in subdivision (10).

(11) Specifically denies the allegations contained in subdivision (11).

(12) With reference to the allegations contained in subdivision (12), admits that the taxpayer in filing its original return for the calendar year 1919 deducted from gross income as a loss sustained by it on account of its investment in

shares of stock of the Walworth & Neville Manufacturing Company the sum of \$74,400.00.

[24] (13) Admits that the Commissioner disallowed the deduction of said loss from the taxpayer's gross income for the reason that said loss resulted from the taxpayer's exchanging shares of its own stock for shares of stock in another company and then in the year 1919 receiving back a portion of the shares of its own stock in exchange for the shares of stock held in the other company.

(14) With reference to the allegations contained in subdivision (14), admits that the Commissioner deducted the amount of said loss as determined by him from the taxpayer's paid-in surplus.

IV. Specifically denies each and every allegation contained in the taxpayer's petition not hereinabove expressly admitted to be true.

PROPOSITIONS OF LAW.

(1) Where a corporation exchanged shares of its own stock for shares of stock in another corporation and later upon liquidation of the other corporation received back a portion of its own shares of stock, the resulting loss on the transaction is not deductible from the taxpayer's gross income but affects only its invested capital.

(2) Where a corporation buys its own stock the entire cost of such stock must be deducted from its invested capital.

WHEREFORE, it is prayed that the taxpayer's appeal be dismissed.

A. W. GREGG,
Solicitor of Internal Revenue.
Attorney for Commissioner of Internal Revenue.
Of Counsel:

GEORGE G. WITTER,
Special Attorney,
Bureau of Internal Revenue.

Now, January 26, 1929, the foregoing answer certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[25] United States Board of Tax Appeals.

Promulgated May 28, 1928.

DOCKET No. 10295.

WALVILLE LUMBER COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Company A owned all the capital stock of Company B, for which it had exchanged all its assets and fifty-five per cent of its common stock. It had transacted practically no business for ten years other than to receive dividends on Company B stock, pay out the money so received to its own stockholders and attend to

its duties as stockholder. In 1919 Company B reorganized, reduced its capital stock one-half, and issued 4,244 of the authorized issue of 5,000 shares pro rata to the stockholders of Company A, other than itself, and left 756 shares unissued. Company A was immediately dissolved and paid nothing to its stockholders. *Held*, that Company B suffered no deductible loss under section 234 of the Revenue Act of 1918.

ANDREW G. ELDER, Esq., NATHAN W. HILL, Esq., and EUGENE H. KNAPP, Esq.,
for the Petitioner.

HENRY RAVENAL, Esq., for the Respondent.

This proceeding results from the determination by respondent of a deficiency of \$7,514.86 in petitioner's income and profits taxes for the year 1919. The deficiency arises from the refusal of the respondent to allow a deduction of \$74,400 claimed by the petitioner as a loss sustained by it on 4,400 shares of stock of the Walworth & Neville Manufacturing Company purchased and paid for by petitioner in 1908, and which had become worthless within the year 1919.

A true copy.

[Seal]

Teste: B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

[26] FINDINGS OF FACT.

The petitioner, hereinafter referred to as the lumber company, was incorporated in 1908 under

the laws of the State of Washington, with authorized capital stock of \$1,000,000, divided into 10,000 shares of the par value of \$100, each. In the same year it acquired from the Walworth & Neville Manufacturing Company, a Michigan corporation, hereinafter referred to as the manufacturing company, certain timber lands, cut-over lands, sawmill, cross-arm factory, machinery and equipment, and 4,400 shares of the stock of the manufacturing company, and issued therefor its entire authorized capital stock to persons not disclosed by the record. The value of this property at date of acquisition by the petitioner was \$1,170,000.

The 4,400 shares of stock acquired from the manufacturing company as above set forth and owned by the petitioner at March 1, 1913, had a fair market value of \$225,967.28 on that date. In the taxable year the manufacturing company owned 5,541 shares of the stock of the petitioner.

In 1919 the petitioner reduced its capital stock without consideration to 2,500 shares of common stock and 2,500 shares of preferred stock, all of the par value of \$100, each. This procedure reduced the 5,541 shares of the petitioner's stock then owned by the manufacturing company to 1,385 $\frac{1}{4}$ shares of common and 1,385 $\frac{1}{4}$ shares of preferred. In the distribution of its reduced stock, the petitioner issued 1,385 $\frac{1}{4}$ shares of preferred to certain owners of the preferred stock of the manufacturing company, 629 $\frac{1}{4}$ shares of common to other stockholders of [27] such company, 1114 $\frac{3}{4}$ shares of preferred and 1114 $\frac{3}{4}$ shares of common to its other

shareholders and retained unissued 756 shares of common.

Upon the completion of the reorganization of the petitioner the manufacturing company had no assets, except its interest in the stock of the petitioner, and was dissolved with its outstanding stock of the par value of \$440,000 owned by the lumber company. It was also in debt to its own preferred stockholders in amounts not disclosed by the record.

In its income and profits-tax return for the year 1919 the petitioner estimated the value at March 1, 1913, of its 4,400 shares of the stock of the manufacturing company at \$150,000, and deducted as a loss sustained in the taxable year the difference between such value and the par value of its 756 shares of unissued stock in the amount of \$74,400. The respondent disallowed the deduction so claimed and determined the deficiency here in controversy. The parties agree that the stock of the manufacturing company owned by the petitioner had a fair market value of \$225,967.28 at March 1, 1913, and that the unissued stock of the petitioner in the taxable year had a fair market value of \$107,197.53, and that the manufacturing company owned 5,541 shares of the common stock of the petitioner just prior to the reorganization thereof.

The stock of the manufacturing company consisted of 8,000 shares of common and 1,000 shares of preferred. At the date of the reorganization of the transactions involved in this proceeding, the petitioner owned 44/80th of the common stock of

the manufacturing company and the [28] manufacturing company owned 55.41 per cent of the stock of the petitioner.

OPINION.

LANSDON.—At the hearing before the Board counsel for petitioner said:

The Walworth Manufacturing Company was dissolved in the year 1919. At the date of its dissolution that corporation owned certain shares of stock in the Walville Lumber Company which may be accepted, and I believe it is admitted as being its only asset at or immediately prior to the dissolution. The reduced shares of stock of the petitioner which were issuable to the Walworth & Neville Manufacturing Company as one of its stockholders were never, in fact, issued to that company. Instead, its proportion of the preferred stock and 629 $\frac{1}{4}$ shares of the common stock were issued directly to the stockholders of the Walworth & Neville Manufacturing Company, other than the petitioner, 756 shares which might in the ordinary course have been issued to the Walworth & Neville Manufacturing Company never having been issued.

This statement, while it may not be considered as evidence, is clearly an admission that the petitioner instead of issuing its shares of diminished stock to the manufacturing company, in proportion to the stockholdings thereof, actually issued them to certain of the stockholders of that company. The

admission is in line with and tends to confirm the conclusion naturally deducible from the facts in evidence, that the stockholders of the two companies, including, necessarily, the companies themselves, decided to and did take a short cut across lots to accomplish the result they had in mind; that they in effect restored to the lumber company title to all its capital stock on condition that the number of shares be decreased one-half, as they were decreased, and be issued, as they were issued, to certain of the stockholders of the manufacturing company. As a part of the final result, the 4,400 shares of the stock of the defunct [29] manufacturing company became worthless in the hands of the petitioner which as a set-off to this loss retained 756 shares of its new stock unissued. There was evidently an agreement among the two companies and their stockholders to consider that all customary legal steps had been accomplished by the results attained.

So far as we have been able to ascertain, petitioner has received no compensation for its manufacturing company stock, except the 756 shares of its own stock remaining unissued. Considering the transaction as a whole, we have here seemingly a gain to the lumber company of 756 shares of its own authorized second issue as against a loss of the 4,400 shares of the manufacturing company's stock, a net gain or loss of the difference between these two. Substituting admitted values for shares, we have \$225,769.28 loss, minus \$107,197.53, which equals \$118,769.75, the loss which the peti-

tioner now alleges that it sustained in the taxable year.

These transactions could not have taken place without the lumber company's assistance; certainly not without its acquiescence. It held 4,400 of the 8,000 shares of the common stock of the manufacturing company. That is to say, its shares constituted $\frac{44}{80}$ ths of the common stock and $\frac{44}{90}$ ths of all the stock, and therefore, as stated in its tax return for 1919, it "held a controlling interest in the stock" of that company. It must, therefore, have decided to do the things which were done.

After reorganization the petitioner's stock consisted of 2,500 shares of preferred and 2,500 shares of common, of which $1,385\frac{1}{4}$ [30] shares of preferred and an equal number of shares of common should have been issued to the manufacturing company, which was the owner of 55.41 per cent of the petitioner's original 10,000 shares of issued capital stock. If, after such issue, the manufacturing company had distributed the stock so received as a liquidating dividend, the petitioner, as the owner of 4,400 of the 9,000 outstanding shares of stock of the manufacturing company, would have received back $1,354\frac{1}{4}$ shares of its own stock, and other owners of the stock of the manufacturing company would have received the remainder, or 1,416 shares. Probably on account of its obligations to its preferred stockholders the manufacturing company distributed, or consented to distribution directly to its stockholders, $1,385\frac{1}{4}$ shares of the preferred and $629\frac{1}{4}$ shares of the common stock,

which were due it from the petitioner after reorganization. The effect of this procedure was that the petitioner received no part of the 1,354 shares of its stock due as a liquidating dividend from the manufacturing company and received no advantage therefrom measurable in stock other than the retention of 756 shares of its new common stock unissued.

Since each of the two companies here involved owned a controlling interest in the common stock of the other when the procedure above described was decided upon, we may assume that all the steps taken were the acts of the two corporations with the knowledge and consent of the stockholders of each. Obviously the petitioner must have agreed to [31] relinquish a part of the liquidating dividend due it upon the dissolution of the manufacturing company in favor of the proffered stockholders of that concern. Whether the extra stock received by such preferred stockholders was a gift to them, a liquidating dividend from the manufacturing company, or a stock dividend distributed by the petitioner, cannot be determined from the meager record before us and in our opinion is not material. In any event, the petitioner has proved no loss deductible from its income in the taxable year for tax purposes.

Reviewed by the Board.

Judgment will be entered for the respondent.

Now, January 26, 1929, the foregoing findings of fact and opinion certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

[32] United States Board of Tax Appeals,
Washington.

DOCKET No. 10295.

WALVILLE LUMBER COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ORDER OF REDETERMINATION.

Pursuant to the Board's findings of fact and opinion, promulgated May 28, 1928, it is

ORDERED AND DECIDED: That, upon re-determination, there is a deficiency for the year 1919 in the amount of \$7,514.86.

(Signed) B. H. LITTLETON,

Member, United States Board of Tax Appeals.
Washington, D. C.

Entered May 31, 1928.

A true copy.

Teste: B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

Now, January 26, 1929, the foregoing order of redetermination certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

[33[Filed Nov. 14, 1928. United States Board
of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 10295.

WALVILLE LUMBER COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITIONER'S EXCEPTIONS.

To the Members of the United States Board of Tax
Appeals:

Comes now the Walville Lumber Company, a corporation, petitioner above named, by its attorneys, Andrew G. Elder and Joseph Nievinski, and hereby excepts to the following and hereby requests and moves the Board for an order allowing the petitioner exceptions to the following:

I.

Petitioner excepts to the failure and refusal of the Board to find and adopt petitioner's requested finding of fact number one.

II.

Petitioner excepts to the failure and refusal of the Board to find and adopt petitioner's requested finding of fact number two.

[34] III.

Petitioner excepts to the failure and refusal of the Board to find and adopt petitioner's requested finding of fact number five.

IV

Petitioner excepts to the failure and refusal of the Board to find and adopt petitioner's requested finding of fact number six.

V.

Petitioner excepts to the findings of fact, and to each of them, and to the opinion and decision of the Board made and entered herein under date of May 28, 1928.

VI.

Petitioner excepts to the order of redetermination entered herein on May 31, 1928, deciding that upon redetermination there is a deficiency for the year 1919 in the amount of \$7,514.86.

ANDREW G. ELDER,
JOSEPH NIEVINSKI,
Attorneys for Petitioner.

ORDER ALLOWING PETITIONER'S EX-
CEPTIONS.

The above-entitled matter coming on regularly for hearing before the undersigned member of the above-entitled Board upon the petitioner's excep-

tions to certain matters and proceedings herein, and the matter having come on regularly [35] for hearing and the Board being fully advised in the premises,—

NOW, THEREFORE, IT IS HEREBY ORDERED that each and every one of petitioner's exceptions as set out above be and the same are hereby allowed.

Done at Washington, D. C., this —— day of November, 1928.

Member, United States Board of Tax Appeals.

Now, January 26, 1929, the foregoing petitioner's exceptions certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

[36] Filed Nov. 21, 1928. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 10295.

WALVILLE LUMBER COMPANY, a Corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR ORDER FOR STAY OF COLLECTION.

Comes now the Walville Lumber Company, a corporation, petitioner above named, by its attorneys, Andrew G. Elder and Joseph Nievinski, and hereby petitions for a stay of the collection of the deficiency determined in the above case, and shows to the Board as follows:

I.

That on May 31, 1928, there was entered and filed herein an order of redetermination ordering and deciding that there is a deficiency for the year 1919 in the amount of \$7,514.86.

II.

That the petitioner is now taking appropriate steps for an appeal from said order of redetermination to the United States Circuit Court of Appeals for the Ninth Circuit.

[37] III.

That under date of May 7, 1925, the additional 1919 income tax was assessed under Section 274 (d) of the Revenue Act of 1924; that under date of May 14, 1925, the Collector of Internal Revenue for the District of Washington and Alaska issued his original notice and demand covering this additional assessment in the sum of \$7,514.86; that on May 23, 1925, the Walville Lumber Company filed with the said Collector an abatement claim and on said date filed with said Collector a jeopardy bond in the sum of \$8,000.00 signed by the Wal-

ville Lumber Company, as principal, and the Independence Indemnity Company, as surety, which bond was approved by the said Collector. The said bond and claim for abatement were accepted by the said Collector in accordance with Section 279 (a) of the Revenue Act of 1924 and said bond is now on file in the office of said Collector and is now and will continue to remain in full force and effect until such time as the said deficiency has been satisfactorily adjusted. That there is attached to the original of this petition the original certificate of Burns Poe, Collector of Internal Revenue for the District of Washington and Alaska, as evidence of the matters in this paragraph recited, and there is attached to the copies of this petition true copies of said original certificate.

WHEREFORE, your petitioner prays for an order of this Board staying the collection of the deficiency determined [38] by the Board in this proceeding, as provided in subdivision (c) of Section 1001 of the Revenue Act of 1926 as amended by Section 603 of the Revenue Act of 1928.

ANDREW G. ELDER,
JOSEPH NIEVINSKI,
Attorneys for Petitioner.

Denied for lack of jurisdiction to issue an order as prayed.

Nov. 21, 1928.

B. H. LITTLETON,
Member.

[39] State of Washington,
County of King,—ss.

Andrew G. Elder, being first duly sworn, on oath deposes and says that he is one of the attorneys for the petitioner in the above-entitled matter; that he has read the within and foregoing petition, knows the contents thereof and believes the same to be true.

ANDREW G. ELDER.

Subscribed and sworn to before me this 16th day of November, 1928.

EUGENE H. KNAPP,
Notary Public in and for the State of Washington,
Residing at Seattle.

[40] TREASURY DEPARTMENT.

Internal Revenue Service.

Tacoma, Washington.

Nov. 13, 1928.

Office of the Collector,
District of Washington.

Walville Lumber Co.,

c/o Elder & Nievinski,

Dexter Horton Bldg., Seattle, Wash.

Gentlemen: We are in receipt of a letter from Elder & Nievinski acting as your attorneys, dated November 8, 1928, and relating to outstanding 1919 income tax due from you. The information requested by Mr. Nievinski is submitted as follows:

1—The additional 1919 income tax was assessed on May 7, 1925, under Section 274-D of the Revenue Act of 1924.

2—The date of our original notice and demand covering this additional assessment was made May 14, 1925.

3—The amount of the assessment is \$7,514.86 and is for income tax for the calendar year 1919.

4—An abatement claim was filed by the company in this office on May 23, 1925.

5—A surety bond was filed in connection with the account in this office on May 23, 1925. This bond in the principal sum of \$8,000.00 signed by the Walville Lumber Company as principal and the Independence Indemnity Company as surety, was approved by this office.

7—As this deficiency assessment was made under Section 274-D of the 1924 Act, the bond and claim for abatement were accepted by this office in accordance with Section 279-A of the Revenue Act of 1924. The aforesaid bond is on file in this office and is now and will continue to remain in full force and effect until such time as the account has been satisfactorily adjusted and the surety company advised of the termination of its liability on the bond.

I hereby certify that the foregoing information was compiled from the records of my office and that the same truly reflects such record in so far as this additional 1919 income tax assessment is concerned.

(Signed) BURNS POE,
Collector of Internal Revenue for the District of
Washington and Alaska.

EMB: ML.

Enc.

Now, January 26, 1929, the foregoing petition for order to stay collection certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

[41] Filed Nov. 23, 1928. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 10295.

WALVILLE LUMBER COMPANY, a Corporation,
tion,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW OF DECISION OF
THE UNITED STATES BOARD OF TAX
APPEALS.

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

The Walville Lumber Company, a corporation, the petitioner in the above-entitled action, conceiving itself aggrieved by the findings of fact, opinion, decision, and order of redetermination entered against it and in favor of the respondent, the commissioner of internal revenue, which decision was promulgated and filed under date of May 28, 1928,

and which order of redetermination was made, entered and filed on May 31, 1928, hereby in pursuance of the provisions of Section 1001 of the Act of Congress approved February 26, 1926, entitled the Revenue Act of 1926, respectfully petitions the above-entitled court for a review of the said findings of fact, opinion, decision and order of redetermination, and respectfully shows to this Honorable Court as follows:

[42] I.

STATEMENT OF THE NATURE OF THE
CONTROVERSY.

1. Prior to the enactment of the Revenue Act of 1926 the petitioner filed with the United States Board of Tax Appeals in pursuance of the provisions of the Revenue Act of 1924, its petition requesting the redetermination of a deficiency in income and profits taxes for the calendar year 1919 amounting to \$7,514.86, as shown by the final notice of deficiency previously mailed by the respondent to the petitioner under date of November 9, 1925.

2. The hearing was had before the Board upon the said petition and upon an answer of the respondent.

3. The petition alleged that the petitioner was organized in the year 1908 under the laws of the State of Washington with an authorized capital stock of \$1,000,000.00, consisting of 10,000 shares of the par value of \$100.00 each, and that the petitioner's office and principal place of business was

located at Walville, Washington. These allegations were admitted by the answer.

4. The petitioner further alleged that in exchange for all of the said authorized capital stock and the assumption of certain liabilities, the petitioner acquired certain property, including 4,400 shares, par value \$440,000.00, of the capital stock of the Walworth & Neville Manufacturing Company; that the assets so acquired had a fair value of \$170,329.46 in excess of the par value of the shares of stock issued therefor [43] and the liabilities assumed; that during the year 1919 the capital stock of the petitioner was reduced without consideration from \$1,000,000.00 to \$500,000.00, the latter consisting of 2,500 shares of common and 2,500 shares of preferred of the par value of \$100.00 each; that prior to the reduction of the capital stock of the petitioner, the Walworth & Neville Manufacturing Company was the owner or holder of 5,541 shares of stock in the petitioner corporation, and that upon the said reduction of the capital stock of the petitioner, if the stock were distributed to petitioner's stockholders, the manufacturing company would have received $1,385\frac{1}{4}$ shares of common and $1,385\frac{1}{4}$ shares of preferred stock that no certificate or certificates evidencing the reduced shares of stock of the petitioner were ever issued to the Walworth & Neville Manufacturing Company, but instead thereof, certificates for $1,385\frac{1}{4}$ shares of preferred stock were issued to the preferred stockholders of the Walworth & Neville Manufacturing Company and $629\frac{1}{4}$ shares of the common stock

of the petitioner were issued directly to certain stockholders of the Walworth & Neville Manufacturing Company other than the petitioner; that there remained unissued of the petitioner's reduced stock, 756 shares of common; that thereafter the Walworth & Neville Manufacturing Company, in which petitioner then owned 4,400 shares of stock with a par value of \$440,000.00, was formally dissolved. All of the foregoing allegations are admitted by the respondent's answer.

[44] 5. The petition further alleged that at the date of the dissolution of the Walworth & Neville Manufacturing Company it had no assets and hence its stockholders, including the petitioner, received nothing as a liquidating dividend. This allegation is denied by the respondent.

6. The petition further alleged that the 4,400 shares of stock of the Walworth & Neville Manufacturing Company owned by the petitioner were acquired at a cost of \$440,000.00 and had a fair market value at the basic date of March 1, 1913, of \$225,967.28, which allegations are admitted by the answer.

7. The petition further alleged that in computing the net income of the petitioner for the year 1919 there was taken into account as a tentatively determined loss the amount of \$74,400.00 with respect to the petitioner's investment in the 4,400 shares of stock of the Walworth & Neville Manufacturing Company, which is admitted in the answer.

8. It is set out that the Commissioner disallowed the deduction of the said loss from the taxpayer's gross income for the reason that the loss resulted from the taxpayer's exchanging shares of its own stock for shares of stock in the other corporation and then in the year 1919 receiving back a portion of the shares of its own stock in exchange for the shares of stock held in the other company.

9. In its petition the petitioner assigned two assignments of error, only one of which was urged before the Board, [45] to wit: That the Commissioner of Internal Revenue erred in disallowing the loss sustained with respect to the investment of the petitioner in the 4,400 shares of stock of the Walworth & Neville Manufacturing Company which had been acquired in the year 1908 at a cost of \$440,000.00 and had a value at the basic date of March 1, 1913, of \$225,967.28, which loss represented the value at the basic date in excess of the amount received for said shares of stock upon the dissolution of the Walworth & Neville Manufacturing Company.

10. The cause being at issue under the rules of practice of said Board upon the filing of the respondent's answer duly came on for hearing at Seattle, Washington, on June 13, 1927, at which time the petitioner by competent witnesses submitted testimony in support of the allegations as aforesaid. Testimony at the hearing showed that the 756 shares of the Walville Lumber Company, which remained unissued after the reduction of the capital stock of the Walville Lumber Company, was

the proportionate amount of Walville Lumber Company stock which its holdings in the Walworth & Neville Manufacturing Company would have entitled it to receive on the distribution of the assets of the latter corporation if the said 756 shares of common stock had actually been issued. Thereafter, on May 29, 1928, the said Board rendered its findings of fact, together with an opinion in which it held that the petitioner sustained no deductible loss in the year 1919 with respect to its investment in the 4,400 shares of stock of the Walworth & Neville Manufacturing Company.

[46] 11. Thereafter, on May 31, 1928, the Board entered its final order of redetermination ordering and deciding that there was a deficiency for the year 1919 in the sum of \$7,514.86.

II.

DESIGNATION OF COURT OF REVIEW.

The petitioner is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal place of business and principal office located at Walville, Washington.

The petitioner made its income and profits tax return for the year 1919 to the Collector of Internal Revenue at Tacoma, Washington. The petitioner being aggrieved by the findings of fact, opinion, and order of redetermination of the Board, desires a review thereof in accordance with the provisions of the Revenue Act of 1926 by the United

States Circuit Court of Appeals for the Ninth Circuit.

III.

ASSIGNMENTS OF ERROR SEPARATELY STATED AND NUMBERED IN RESPECT OF EACH AND EVERY ERROR AS- SERTED AND INTENDED TO BE AR- GUED.

The decision, order, and judgment made and entered in the above-entitled cause on May 31, 1928, in favor of the respondent and against the petitioner is erroneous and against the just rights of said petitioner, and as a basis for review of said decision, order and judgment, petitioner makes the following assignments of error, which said petitioner avers occurred upon [47] the trial of said cause and upon which assignments of error the petitioner relies as a basis of this proceeding:

(1)

The Board erred in entering the order of retermination made and entered on May 31, 1928, and in finding and deciding that there is a deficiency for the year 1919 in the amount of \$7,514.86.

(2)

The Board erred in finding as a fact that upon the completion of the reorganization of the petitioner, Walville Lumber Company, the Walworth & Neville Manufacturing Company had as assets, an interest in the stock of the petitioner, there being no evidence in the record to support any such finding, and there being no competent evidence offered or

received at the hearing tending to prove the allegations of said finding of fact, and said allegations of said finding of fact were and are against the preponderance of the evidence.

(3)

The Board erred in its conclusion in its decision and opinion promulgated May 28, 1928, to the effect that if the petitioner had issued to the Walworth & Neville Manufacturing Company the 1,385 $\frac{1}{4}$ shares of preferred stock and the 1,385 $\frac{1}{4}$ shares of common stock of the petitioner to which the manufacturing company was entitled, and if after such issue the Walworth & Neville Manufacturing Company had distributed such issue as a liquidating dividend, the petitioner as the owner of 4,400 [48] of the 9,000 outstanding shares of stock of the Walworth & Neville Manufacturing Company would have received back 1,354 $\frac{1}{4}$ shares of its own stock and other owners of the stock of the Walworth & Neville Manufacturing Company would have received the remainder or 1,416 shares, there being no evidence in the record to support any such finding, and there being no competent evidence offered or received at the hearing to prove the allegations of the said finding of fact and conclusion, and said allegations of said finding of fact and conclusion were and are against the preponderance of the evidence and the said conclusion and the whole thereof is not supported by the findings of fact or the evidence herein.

(4)

The Board erred in failing and refusing to find

and adopt petitioner's requested finding of fact number one.

(5)

The Board erred in failing and refusing to find and adopt petitioner's requested finding of fact number two.

(6)

The Board erred in failing and refusing to find and adopt petitioner's requested finding of fact number five.

(7)

The Board erred in failing and refusing to find and adopt petitioner's requested finding of fact number six.

(8)

The Board erred in its conclusion that the petitioner sustained no loss in the year 1919 with respect to its investment in the 4,400 shares of stock of the Walworth & Neville [49] Manufacturing Company which were purchased and paid for by the petitioner in 1908 and which had become worthless within the year 1919.

(9)

The Board erred in entering the order of redemption made and entered on May 31, 1928, for the reason that the same is not supported by the findings of fact herein nor by any evidence herein.

(10)

The Board erred in failing and refusing to enter an order in favor of the petitioner ordering and

deciding that there was and is no deficiency in income and profits taxes for the year 1919.

WHEREFORE, your petitioner prays that this Honorable Court may review said findings, decision, opinion, and order of redetermination and reverse and set aside the same, and that the Clerk of the said United States Board of Tax Appeals be directed to transmit and deliver to the Clerk of said Circuit Court of Appeals certified copies of all and every of the documents necessary and material to the presentation and consideration of the foregoing petition for review and as required by the rules of said court and statutes made and provided.

And your petitioner will ever pray.

WALVILLE LUMBER COMPANY, a Corporation,

By ANDREW G. ELDER,
Its Attorney.

ANDREW G. ELDER,
JOSEPH NIEVINSKI,
Attorneys for Petitioner,
Dexter Horton Building,
Seattle, Washington.

[50] State of Washington,
County of King,—ss.

Andrew G. Elder, being first duly sworn, on oath deposes and says that he is one of the attorneys of record for the petitioner, Walville Lumber Company, a corporation, and that as such he had authority to and did sign the foregoing petition; that

he has read the same, and that the facts set forth therein are true to the best of his knowledge and belief; and that the said petition is filed in good faith.

ANDREW G. ELDER.

Subscribed and sworn to before me this 10 day of November, 1928.

[Seal] EUGENE H. KNAPP,
Notary Public in and for the State of Washington,
Residing at Seattle.

Copy of the within petition for review of decision of the United States Board of Tax Appeals is hereby acknowledged this 23 day of November, 1928.

C. M. CHAREST,
H.,
General Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.

[51] Filed Nov. 22, 1928. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 10295.

WALVILLE LUMBER COMPANY, a Corporation,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF FILING OF PETITION FOR
REVIEW OF DECISION OF UNITED
STATES BOARD OF TAX APPEALS.

To the Commissioner of Internal Revenue, Respondent Above Named, and to C. M. Charest, General Counsel, Bureau of Internal Revenue, His Attorney:

Notice is hereby given that Walville Lumber Company, a corporation, the petitioner above named, has filed with the United States Board of Tax Appeals a petition for a review of the decision of the United States Board of Tax Appeals made and filed on May 28, 1928, and the order of final redetermination made and entered on the 31st day of May, 1928, in the case of the Walville Lumber Company, a Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent, Docket No. 10295, of the said Board.

ANDREW G. ELDER,
JOSEPH NIEVINSKI,
Attorneys for Petitioner,
Dexter Horton Building,
Seattle, Washington.

[52] Copy of the within notice and copy of the petition for review after filing of the original thereof with the Clerk of the Board of Tax Ap-

peals is hereby acknowledged this 23 day of November, 1928.

C. M. CHAREST,
H.,
General Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.

Now, January 26, 1929, the foregoing petition for review and notice of filing certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

[53] United States Board of Tax Appeals.

DOCKET No. 10295.

WALVILLE LUMBER COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ORDER INCORPORATING PETITIONER'S
AMENDMENT LODGED WITH THE
BOARD DECEMBER 10, 1928, IN THE
STATEMENT OF THE EVIDENCE
LODGED WITH THE BOARD ON NO-
VEMBER 23, 1928.

On November 23, 1928, petitioner, in the above-entitled proceeding, lodged with the Board a pro-

posed statement of the evidence, to which the respondent filed objections on December 3, 1928. Thereafter, on December 10, 1928, petitioner lodged with the Board an amendment to the proposed statement of the evidence and, at a hearing had thereon, on December 10, 1928, there was no objection to the amendment offered. The parties having agreed that such amendment disposes of the respondent's objections, filed on December 3, 1928, it is

ORDERED: That the amendment, be, and the same is hereby, incorporated in the statement of the evidence lodged with the Board on November 23, 1928, which will be submitted for certification.

Dated, Washington, D. C., December 11, 1928.

W. C. LANSDON,

Member, United States Board of Tax Appeals.

Now, January 26, 1929, the foregoing order incorporating petitioner's amendment in statement of evidence certified from the record as a true copy.

[Seal]

B. D. GAMBLE,

Clerk U. S. Board of Tax Appeals.

A true copy.

Teste: B. D. GAMBLE,

Clerk U. S. Board of Tax Appeals.

[54] Filed Nov. 23, 1928. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 10295.

WALVILLE LUMBER COMPANY, a Corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF LODGMENT OF STATEMENT OF
EVIDENCE.

To the Commissioner of Internal Revenue Above
Named and to C. M. Charest, General Counsel,
Bureau of Internal Revenue.

Sirs: You, and each of you, will please take notice that the statement of the evidence of the petitioner on review in this cause (a copy of which statement of the evidence is herewith served upon you) has this day been lodged in the office of the Clerk of the United States Board of Tax Appeals for your examination, and you, and each of you, are hereby notified that on the 10th day of December, 1928, in the hearing rooms of this Board at 10 o'clock in the forenoon of that day, or as soon thereafter as the Board may designate and hearing may be had, we will ask the Honorable W. C. Lansdon, Member of the United States Board of Tax Appeals, to approve said statement as the statement of evidence in this proceeding.

[55] You are further requested that if you have any objections or amendments to propose to the petitioner's proposed statement of the evidence in this proceeding, to serve the same or a copy thereof on or before the 29th day of November, 1928, on William M. Smith, care of Price, Waterhouse & Company, National Press Building, Washington, D. C.

Dated this 13th day of November, 1928.

ANDREW G. ELDER,
JOSEPH NIEVINSKI,
Attorneys for Petitioner,
Dexter Horton Building.
Seattle, Washington.

Service accepted this 23d day of November, 1928.

C. M. CHAREST,
A.,
General Counsel,
Bureau of Internal Revenue.

[56] Filed Dec. 10, 1928. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 10295.

WALVILLE LUMBER COMPANY, a Corporation,
Petitioner,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF LODGMENT OF AMENDMENT
TO THE STATEMENT OF THE EVIDENCE.

To the Commissioner of Internal Revenue Above
Named and to C. M. Charest, General Counsel,
Bureau of Internal Revenue:

Sirs: You, and each of you, will please take notice that the amendment to the statement of the evidence of the petitioner on review in this cause (a copy of which amendment to the statement of the evidence is herewith served upon you) has this day been lodged in the office of the Clerk of the United States Board of Tax Appeals for your examination and you and each of you, are hereby notified that on the 10th day of December, 1928, in the hearing rooms of this Board at 10 o'clock in the forenoon of that day, or as soon thereafter as the Board may designate and hearing may be had, we will ask the Honorable W. C. Lansdon, Member of the United States Board of Tax Appeals, to approve said amendment to the statement of the evidence in this proceeding.

[57] You are further requested that if you have any objections or amendments to propose to the petitioner's proposed amendment to the statement of the evidence in this proceeding, to serve the same or a copy thereof on or before the 10th day of December, 1928, on William M. Smith, Care of Price, Waterhouse & Company, National Press Building, Washington, D. C.

Dated this 10th day of December, 1928.

ANDREW G. ELDER,
JOSEPH NIEVINSKI,
Attorneys for Petitioner,
Dexter Horton Building,
Seattle, Washington.

Service accepted this 10th day of December, 1928.

C. M. CHAREST,
H.

General Counsel, Bureau of Internal Revenue.

[58] No objection or amendment will be made by the Commissioner of Internal Revenue and/or C. M. Charest, General Counsel, Bureau of Internal Revenue to the petitioner's foregoing proposed amendment to the statement of the evidence.

D. H. BLAIR,
Commissioner of Internal Revenue.

C. M. CHAREST,
H.

General Counsel,
Bureau of Internal Revenue.

Dated at Washington, D. C., this 10th day of December, 1928.

[59] Lodged Nov. 23, 1928.

United States Board of Tax Appeals.

DOCKET No. 10295.

WALVILLE LUMBER COMPANY, a Corpora-
tion,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

LODGMET OF PETITIONER'S STATE-
MENT OF THE EVIDENCE.

Comes now the petitioner, Walville Lumber Company, a corporation, by its attorneys, Andrew G. Elder and Joseph Nievinski, and hereby lodges with the Clerk of the United States Board of Tax Appeals the petitioner's statement of the evidence, together with four (4) conformed copies thereof, said statement of evidence to be settled by the Honorable W. C. Lansdon, Member of the United States Board of Tax Appeals, as provided by the rules of the United States Circuit Court of Appeals for the Ninth Circuit and by the rules of the United States Board of Tax Appeals.

ANDREW G. ELDER,

JOSEPH NIEVINSKI,

Attorneys for Petitioner.

[60—1] United States Board of Tax Appeals.

DOCKET No. 10295.

WALVILLE LUMBER COMPANY, a Corpora-
tion,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF THE EVIDENCE.

BE IT REMEMBERED that on the 13th day of June, 1927, at Seattle, Washington, the above-entitled cause came on for hearing before the Honorable W. C. Lansdon, Member of the United States Board of Tax Appeals, the petitioner appearing by its attorneys, Andrew G. Elder, Matthew W. Hill, and Eugene H. Knapp, and the respondent appearing by his attorneys, Henry Ravenel and A. W. Gregg, General Counsel, Bureau of Internal Revenue.

Whereupon the following proceedings were had:

TESTIMONY OF JOHN H. NEVILLE, FOR
PETITIONER.

JOHN H. NEVILLE, having been called by the petitioner as a witness, being first duly sworn, testified as follows:

He resided at Walville, Washington, his business being that of a lumberman; he was connected with

(Testimony of John H. Neville.)

the Walville Lumber Company and at the time of the hearing was [61—2] president and general manager of the company; during the year 1919 he was vice-president of that company and in the latter part of the year became treasurer and general manager.

During the year 1919 J. C. Neville, the president of the company, died.

The Walville Lumber Company was a corporation of the State of Washington and in the year 1919 owned shares of stock in the Walworth & Neville Manufacturing Company.

He was also a stockholder and director in the Walworth & Neville Manufacturing Company during the year 1919.

The Walworth & Neville Manufacturing Company was incorporated under the laws of the State of Michigan.

The Walville Lumber Company owned 4,400 shares of stock in the Walworth & Neville Manufacturing Company which had been acquired at the time of the incorporation of the Walville Lumber Company. The original cost of this stock in 1908 to the petitioner was \$440,000.00 (which amount was admitted in respondent's answer). The value of said shares of stock as of March 1, 1913, was \$225,967.28 (which amount was admitted in respondent's answer).

In the year 1919 the Walworth & Neville Manufacturing Company owned 5,541 shares of stock in the Walville Lumber Company.

(Testimony of John H. Neville.)

The capital stock of the Walville Lumber Company was reduced in the year 1919, without consideration, from a par value of \$1,000,000.00 common stock to an authorized issue of \$250,000.00 preferred and \$250,000.00 common.

[62—3] The Walworth & Neville Manufacturing Company was dissolved in the year 1919.

Early in the year 1919 that active officers of the Walworth & Neville Manufacturing Company approached the management of the Walville Lumber Company with the proposal that the latter company do something which would enable the Manufacturing Company to wind up its affairs. The Manufacturing Company turned to the Lumber Company principally because the former's holdings of the latter's stock were all that the former had left in the way of assets. At that time the Walworth & Neville Manufacturing Company had outstanding an issue of preferred stock which was cumulative in respect of dividends and they asked the Walville Lumber Company to so arrange the stock issues that the Manufacturing Company might satisfy primarily its preferred stockholders. The Walville Lumber Company thereupon followed this proposal. Its stock was first reduced in quantity to \$500,000.00 par value, which was divided into \$250,000.00 common and \$250,000.00 preferred. Because of the Manufacturing Company's holdings in the Walville Lumber Company, the former received a portion of the preferred stock which it in turn was able to use in satisfying the claims of its preferred

(Testimony of John H. Neville.)

stockholders. The Walville Lumber Company issued all of its preferred stock and all of its common stock except 756 shares which remained unissued. Thereafter, the Walworth & Neville Manufacturing Company was dissolved, having no assets on hand. At the request of the Walworth & Neville [63—4] Manufacturing Company the preferred stock and the common stock which it had coming to it from the Walville Lumber Company was issued directly to the stockholders of the Walworth & Neville Manufacturing Company.

The 756 shares of common stock which were never issued by the Walville Lumber Company was the amount of stock which the Walville Lumber Company would have received if it had issued to the Walworth & Neville Manufacturing all of the stock that was due that company and then a liquidation of that company had taken place. In other words, the 756 shares of the Walville Lumber Company stock which were never issued after the reduction of the capital stock of the Walville Lumber Company was the proportionate amount of the Walville Lumber Company's stock which its holdings in the Walworth & Neville Manufacturing Company would have entitled it to receive on the disposition of the assets of that corporation.

The income and profits tax return of the Walville Lumber Company for the year 1919 was made by the witness and was signed by him together with J. D. Wilson. The said return was thereupon iden-

(Testimony of John H. Neville.)

tified and offered and received in evidence, without objection, as Petitioner's Exhibit No. 1.

The witness further testified: That Line 22, under Schedule A, gross income, of Petitioner's Exhibit No. 1, reading "Profit or loss on sales of capital assets and miscellaneous investments, including liquidating dividends," showed a computation of a loss in the sum of \$74,400.00.

[64—5] On cross-examination the said witness testified as follows:

The acquisition of the 4,400 shares of stock of the Walworth & Neville Manufacturing Company which the Walville Lumber Company owned in 1919 was made by the Lumber Company before the witness' active participation in the management of the Lumber Company. He inherited the understanding that the stock of the Walworth & Neville Manufacturing Company which the Walville Lumber Company acquired in 1908 was paid for in full and that it was worth the full amount. The payment, he believed, was in the form of stock. The 756 shares of the common stock of the Walville Lumber Company which were not issued in 1919 represented the Lumber Company's proportion of the assets of the Walworth & Neville Manufacturing Company on dissolution. The reason why it was not issued was that it seemed like the better thing for the Walville Lumber Company to do, to have the 756 shares as unissued stock rather than treasury stock. There was no point in issuing the

(Testimony of John H. Neville.)

stock and it gave the Lumber Company the advantage of keeping it as unissued stock.

On redirect examination the witness testified that instead of the Walville Lumber Company having acquired the 4,400 shares of stock of the Walworth & Neville Manufacturing Company for shares of its own stock, it acquired those 4,400 shares of stock, plant and timber land in exchange for its own shares of stock and the assumption of bonded and other indebtedness.

[65—6] TESTIMONY OF FRED NORTH,
FOR PETITIONER.

FRED NORTH was thereupon called as a witness for the petitioner and being first duly sworn, testified as follows:

He was Internal Revenue Agent at Seattle, Washington, and had been an Internal Revenue Agent since November 26, 1920. Prior to that time he was an accountant for different corporations. During the course of his duties as Internal Revenue Agent, he examined the records of the Walville Lumber Company for the year 1919. His attention having been called to Line 22 in Schedule A, gross income, of Petitioner's Exhibit No. 1, he testified that he made a change in the return which showed a loss of \$74,400.00 by increasing the amount of the deductible loss. He computed the value of the 4,400 shares of stock of the Manufacturing Company owned by the Lumber Company to be \$225,967.28

(Testimony of Fred North.)

as of March 1, 1913. The 756 shares of the Walville Lumber Company which were unissued in the year 1919 had a value of \$107,197.53. By subtracting the latter amount from the first amount he arrived at a deductible loss of \$118,769.75. There was no cross-examination of this witness.

TESTIMONY OF JOSEPH B. BANTON, FOR PETITIONER.

JOSEPH B. BANTON was thereupon called as a witness on behalf of the petitioner and being first duly sworn, testified as follows:

He resided at Walville, Washington, and was secretary and treasurer of the Walville Lumber Company and had charge of the financial and other records of that company relating to the [66—7] reduction of its capital stock in the year 1919. He thereupon identified Petitioner's Exhibit No. 2 for Identification as a statement of the capital stock of the Walville Lumber Company, the balance sheet from January 1, 1913, to December 31, 1919. Thereupon the said exhibit was offered and received in evidence as Petitioner's Exhibit No. 2. Petitioner's Exhibit No. 2 showed that on January 1, 1919, the credit balance of the capital stock outstanding was \$1,000,000.00. On December 31, 1919, capital stock was charged to deficit account \$1,000,000.00, leaving no balance.

Petitioner's Exhibit No. 3 was thereupon offered and received in evidence without objection. This exhibit is the ledger statement representing the

(Testimony of Joseph B. Banton.)

common stock of the Walville Lumber Company and under date of December 31, 1919, shows a credit balance of \$174,400.00.

Petitioner's Exhibit No. 4 was then offered and received in evidence without objection. This is the ledger sheet of the Walville Lumber Company representing its deficit account for the year 1919. Debit account was charged with preferred stock \$250,000.00. It was credited with the capital stock of \$1,000,000.00. It was charged with common stock of \$174,400.00. It was charged with surplus of \$119,228.09.

On cross-examination the witness testified that he was not connected with the company in the year 1919.

JOHN H. NEVILLE, RECALLED BY RESPONDENT.

Thereafter JOHN H. NEVILLE was recalled by counsel for the Commissioner and testified that in 1919 on the dissolution [67—8] of the Walworth & Neville Manufacturing Company, the Walville Lumber Company surrendered its stock in that corporation.

The petitioner thereupon rested its case.

TESTIMONY OF FRED NORTH, FOR RESPONDENT.

FRED NORTH was thereupon called as a witness on behalf of the respondent but objection was sustained to the questions asked of the witness. No

testimony was offered on behalf of the respondent and the respondent thereupon rested.

The foregoing is the substance of all the evidence adduced at the hearing of this proceeding.

The Board took the case under advisement and on May 28, 1928, made and filed its findings of fact and opinion herein. Thereafter, on May 31, 1928, an order of redetermination was entered herein finding a deficiency for the year 1919 in the sum of \$7,514.86.

CERTIFICATE OF MEMBER OF UNITED
STATES BOARD OF TAX APPEALS TO
STATEMENT OF THE EVIDENCE.

And now because the foregoing matters and things are not of record in this cause, I, W. C. Lansdon, Member of the United States Board of Tax Appeals and the Member Presiding at the hearing of the above-entitled proceeding at Seattle, Washington, do hereby certify that the foregoing statement of the evidence contains the substance of all the [68—9] evidence given on the hearing of this proceeding and each of the exceptions stated to have been taken by the attorneys for the petitioner were so taken and were duly allowed and noted by the Board; and in order that each and every one thereof may be preserved and made of record, this statement of the evidence is hereby duly stated, approved and signed and ordered to be made of record in the above-entitled cause. Said statement of the evidence was duly prepared and submitted within the time allowed by the rules of this Board, and by the

rules of the United States Circuit Court of Appeals for the Ninth Circuit, and is now signed and settled as and for the statement of the evidence in the above-entitled proceeding.

Dated at Washington, D. C., this 11 day of December, 1928.

W. C. LANSDON,
Member, United States Board of Tax Appeals.

This approval is understood to be conditioned upon the addition hereto of the amendment to the statement of evidence which has been agreed to by counsel for the parties.

W. C. LANSDON.

[69] United States Board of Tax Appeals.

DOCKET No. 10,295.

WALVILLE LUMBER COMPANY, a Corporation,
Petitioner,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

AMENDMENT TO THE STATEMENT OF THE
EVIDENCE.

Comes now the petitioner and prays the United States Board of Tax Appeals to enter its order amending the statement of the evidence filed in the above cause with said United States Board of Tax Appeals on November 23, 1928, starting at the top

of page seven (7) and ending at the bottom of page seven (7) only; to read as follows:

[70] “reduction of its capital stock in the year 1919. He thereupon identified Petitioner’s Exhibit No. 2 for identification as a statement of the capital stock of the Walville Lumber Company, the balance sheet from January 1, 1913, to December 31, 1919. Thereupon, the said exhibit was offered and received in evidence as Petitioner’s Exhibit No. 2. Petitioner’s Exhibit No. 2 showed that on January 1, 1919, the credit balance of the capital stock outstanding was \$1,000,000.00. On December 31, 1919, capital stock was charged to deficit account \$1,000,000.00, leaving no balance.

Petitioner’s Exhibit No. 3 was thereupon offered and received in evidence without objection. This exhibit is the ledger statement representing the common stock of the Walville Lumber Company and under date of December 31, 1919, shows a credit balance of \$174,400.00.

Petitioner’s Exhibit No. 4 was then offered and received in evidence without objection. This is the ledger sheet of the Walville Lumber Company representing the preferred stock, that is, the reissued preferred stock, in the sum of \$250,000.00, and the entries thereon show under date of December 31, 1919, a credit balance of \$250,000.00.

Petitioner’s Exhibit No. 5 was then offered and received in evidence without objection. This is the ledger sheet of the Walville Lumber Company representing its deficit account for the year 1919. Deficit account was charged with preferred stock \$250,-

000.00. It was credited with the capital stock of \$1,000,000.00. It was charged with common stock of \$174,400.00. It was charged with surplus of \$119,228.09.

On cross-examination the witness testified that he was not connected with the company in the year 1919.

JOHN H. NEVILLE, RECALLED BY RESPONDENT.

Thereafter JOHN H. NEVILLE was recalled by counsel for the Commissioner and testified that in 1919 on the dissolution [7]''

[71] Dated this 10th day of December, 1928.

ANDREW G. ELDER,
JOSEPH NIEVINSKI,
Attorneys for Petitioner,
Dexter Horton Building,
Seattle, Washington.

O. K.—W. C. LANSDON.

Now, January 26, 1929, the foregoing statement of evidence and amendment thereto with notice of lodgment of statement and notice of lodgment of amendment certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

[72] Filed Jan. 10, 1929. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 10,295.

WALVILLE LUMBER COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

STIPULATION RE FORWARDING ORIGINAL EXHIBITS TO CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, by their respective attorneys, that the original exhibits introduced by the parties to this action upon the hearing of said cause be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

ANDREW G. ELDER,

JOSEPH NIEVINSKI,

Attorneys for Petitioner.

(Sgd.) C. M. CHAREST.

C. M. CHAREST,

General Counsel,

Bureau of Internal Revenue.

ORDER RE TRANSMISSION OF ORIGINAL
EXHIBITS.

[73] On the above stipulation of the parties,—
IT IS HEREBY ORDERED that the original exhibits introduced by the parties to this action upon the hearing of said cause before the Board be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit for use by said Appellate Court in connection with the review taken from the Board's decision; said exhibits to be returned to the files of the Board at the conclusion of the hearing on review.

(Signed) W. C. LANSDON,

Member, U. S. Board of Tax Appeals.

Dated Washington, D. C., January 28, 1929.

Now, January 26, 1929, the foregoing stipulation and order certified from the record as a true copy.

[Seal]

B. D. GAMBLE,

Clerk, U. S. Board of Tax Appeals.

[74] Filed Jan. 10, 1929. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 10,295.

WALVILLE LUMBER COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PRAECIPE FOR TRANSCRIPT OF RECORD
ON REVIEW OF DECISION OF UNITED
STATES BOARD OF TAX APPEALS.

To the Clerk of the United States Board of Tax
Appeals:

You will please prepare a transcript of the complete record in the above-entitled cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit under the petition for review of decision of the United States Board of Tax Appeals heretofore perfected herein, and include in said transcript the following proceedings, papers, records and files, to wit:

1. All docket entries of proceedings before the Board.
2. All pleadings before the Board.
3. Findings of fact, opinion and decision of the Board promulgated under date of May 28, 1928.
4. Order of redetermination entered May 31, 1928.
5. Petitioner's exceptions.
6. Petition for order for stay of collection.
7. Petition for review of decision of the United states Board of Tax Appeals.
- [75] 8. Notice of filing of petition for review of decision of United States Board of Tax Appeals.
9. Notice of lodgment of statement of evidence.
10. Notice of lodgment of amendment to the statement of the evidence.

11. Order incorporating petitioner's amendment lodged with the Board December 10, 1928, in the statement of the evidence lodged with the Board on November 23, 1928.
12. The statement of the evidence as settled and agreed upon.
13. Stipulation *re* forwarding original exhibits to Circuit Court of Appeals for the Ninth Circuit and order *re* forwarding original exhibits to Circuit Court of Appeals for the Ninth Circuit.
14. This praecipe and any and all records, entries, minutes, orders, papers, proceedings, and files necessary or proper to make a complete transcript of the record of said cause in said United States Board of Tax Appeals as required by law and the rules of the Board and the United States Circuit Court of Appeals for the Ninth Circuit.

ANDREW G. ELDER,
JOSEPH NIEVINSKI,
Attorneys for Petitioners.

Due and sufficient service of foregoing praecipe is hereby acknowledged this 2d day of January, 1929.

C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Now, January 26, 1929, the foregoing praecipe certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[Endorsed]: No. 5710. United States Circuit Court of Appeals for the Ninth Circuit. Walville Lumber Company, a Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed February 5, 1929.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

